K. Irland. Henry VII., King
1345

PLAIN REASONS

FOR NEW-MODELLING

POYNINGS' LAW,

IN SUCH A MANNER AS TO ASSERT THE

ANCIENT RIGHTS

OF THE

TWO HOUSES OF PARLIAMENT,

WITHOUT INTRENCHING ON THE

KING's PREROGATIVE.

THE SECOND EDITION, WITH ADDITIONS,
AND AN APPENDIX.

DUBLIN:

PRINTED BY WILLIAM HALLHEAD,
No. 63, DAME-STREET.

M.DCC.LXXXII.

1st & 2d. Edward
1782

ADVERTISEMENT.

THE firſt Edition of the following Paper was publiſhed in the month of March, in the year 1780. Since the ſecond Edition has been ſtruck off, a Pamphlet has appeared, entitled "a Review "of the three great National Queſtions relative to "a Declaration of Right, Poynings' Law, and the "Mutiny Bill." The Appendix contains ſome general ſtrictures on the principles of this Pamphlet, as far as it treats of *Poynings' Law*.

PLAIN REASONS

FOR NEW-MODELLING

POYNINGS' LAW.

AS this paper does not pretend to convey inſtruction to ſtateſmen or lawyers, but is addreſſed principally to the country gentlemen and freeholders of Ireland, who cannot be ſuppoſed to be deeply read in the old ſtatute law, I ſhall make no apology for ſtating at large the alterations which were made in our conſtitution by the act of the 10th of Hen. VII. chap 4, commonly called Poynings' Law *, and the ſubſequent act of the 4th of Philip and Mary explanatory thereof.

BEFORE

* Sir Edward Poynings, during his adminiſtration in Ireland, paſſed two and twenty other laws. By one of theſe, (which *the Engliſh call* Poynings' Law) all the ſtatutes paſſed in England

BEFORE Poynings' Law, Bills were originated in either houſe of parliament indifferently, and having received the ſanction of both houſes, were immediately, without any communication with the king, paſſed or rejected by the king's deputy in this kingdom. By Poynings' Law the method was altered; the houſes of parliament were ſtripped of the power of originating bills: In their ſtead, it was provided, that the privy council ſhould have the ſole power of giving birth to bills, and this too in a limitted degree, for no bills could be introduced into parliament, ſave only ſuch as had been certified over to England, to be returned under the great ſeal of that kingdom, *previous* to the meeting of that parliament in which they were intended to paſs. This laſt proviſion was altered by the 4th of Philip and Mary, chap. 4, which allowed the privy council, *after* a parliament was aſſembled, to certify over to England any new matter which aroſe during the ſeſſion, and which they conceived it proper to mould into a bill. Thus ſtood the law till the reign of Charles I. when our houſes of parliament took upon themſelves to be *humble remembrancers* to the privy

previous to the 10th of Hen. VII. were made of force in Ireland: by another the parliament holden under the lord Gormanſtown, deputy lieutenant in this kingdom, was declared void; the mal-adminiſtration of this lord was the *proximate* cauſe of the law now under our conſideration.

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council of what bills it was proper to certify over to England; and from this ſource originated the preſent practice of framing what are called HEADS of BILLS in either houſe, for the reviſion and correction of that auguſt body, the privy council.

THUS before Poynings' act, bills were introduced, debated, and agreed upon by the two houſes of parliament *excluſively*, and then preſented to the king's repreſentative, to be agreed to or rejected *in the whole, without alteration.* At preſent (under the authority of Poynings' Law, the act of Philip and Mary, and the practice which ſprung up in the reign of Charles I.) heads of bills are thrown together in one of the houſes, and without receiving the ſanction of the other, are carried up to the privy council, where they may be added to, caſtrated, or ſuppreſſed, or if not entirely condemned, may be tranſmitted in the ſhape of a bill to England; where the bill may again be added to, altered, or ſuppreſſed, and if it eſcapes this ſecond ordeal, may be ſent back with all its additions and alterations; and then, and not before, comes before parliament in the proper form of a *bill*; not indeed a ſubject for the wiſdom of parliament to exert itſelf upon, by modelling it to the exigencies of the nation, but to be agreed to, or rejected in the lump, without adding or diminiſhing an

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iota: and if the two houſes can digeſt it in its new ſhape, the conſent of the crown, by the mouth of the deputy, as a matter of courſe, gives it the efficacy of a law.

THESE alterations in the mode of paſſing laws are too pregnant with miſchief to eſcape the animadverſion of the nation that feels their fatal effects. *The new modelling the obnoxious ſtatutes* * *which give riſe to them, is therefore the object which the nation at preſent looks to with the greateſt earneſtneſs.* They expect from the wiſdom and ſpirit of parliament, and the juſtice of the king, *a reſtoration of the ancient rights of parliament*; and they are reſolved by every conſtitutional method in their power, to make their ſentiments known to thoſe who are inveſted with the glorious prerogative of redreſſing their wrongs.

AND the 1ſt reaſon they give for the new modelling of thoſe laws is, in my opinion, a very ſtrong one; becauſe thoſe laws militate directly againſt the very fundamental principles of our conſtitution, as declared by *Magna Charta* and all our ancient records, by parcelling out to the privy councils of

* Poynings' Law, 10 H. VII. c. 4, and the explanatory law of Philip and Mary.

England

England and Ireland that legiſlative power, which the conſtitution entruſts, as a ſacred depoſit, in the hands of king, lords, and commons alone. The conſtitution, ſay they, knows no powers, but the *ſacred majeſty* of the king, the *hereditary honour* and *nobility* of the lords, and the *auguſt aſſemblage* of *active virtues* and *honeſt principles* in the delegates of the people. The privy council neither inveſted with hereditary power, like the lords, nor delegated power, like the commons, have no power, no place, no office in the legiſlature, unleſs you call them the delegates of the crown, (which indeed appoints them) and the abſurdity is too groſs that the king ſhould legiſlate both *indirectly* by proxy, and *directly* in perſon.

But, 2dly, The terms upon which Ireland became an acceſſion to the crown of England, were a compleat participation of the privileges of Engliſhmen, and as the moſt valuable of theſe the boaſted conſtitution of parliament; and as one authentic proof of this, I refer to the * *modus tenendi parliamenta*, (the mode of holding parliaments) tranſmitted

* The authenticity of this *modus* has been called in queſtion by the great Selden, and ſince his time doubted by many of the learned. As it is an important point, which affects the queſtion of the antiquity of the rights of parliament, I hope I ſhall

tranſmitted hither by Henry the Third, for the direction of the Iriſh in modelling this high court; which modus is of record in this kingdom, and

ſhall be indulged in ſetting it in its true light. This modus was given by William the Conqueror, but, ſays Selden, *it belies itſelf, for the word parliament there uſed, was not known in France till the fourteenth century.* Selden was deceived. It is true, the parliaments of France, *conſtituted as they are at this day*, were not eſtabliſhed till about that time: but from the time of Charlemagne (in the 8th century) till the time of Philip the fair, (in the 14th) the ſtates general of the kingdom were entirely diſuſed; ſo that the barons were driven to hold occaſional voluntaty meetings for the ſettlement of their common concerns. Theſe meetings were called *parliaments*, ſays an old French writer, *parceque on y parlementoit.* To hold a *talk* (the Indian phraſe) *un parlement*, a *parley*, is natural language when ſpeaking of an aſſembly of independent chieftains. The courts of juſtice eſtabliſhed by Philip the fair, did not therefore *invent*, they *adopted* the word parliament, which had been applied for five centuries before to theſe voluntary congreſſes of the barons. This reſts on the authority of Bruſſel in his book des Fiefs and Vilhardouin, writers whom Selden perhaps had not read. Is it not then moſt natural that William and his Norman lawyers, living in the time when thoſe parliaments were the only general aſſemblies in the country they had left, ſhould introduce the term *parliament* into England, to denominate the great council they found eſtabliſhed there, and to which the French parliaments bore the neareſt reſemblance of any inſtitution which had fallen within their former experience?

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an exact tranſcript of that which the firſt Norman prince gave to his Engliſh ſubjects. Now a parliament is a body inveſted with a delegated authority for ſpecial purpoſes: A parliament which ſhould, at this day, in England, give away to the crown the power of propoſing and deliberating upon acts, retaining only a negative to themſelves, would exceed the power delegated to them by the people.—The people would ſpurn ſuch gift—ſuch gift would be abſolutely void: But that Iriſh parliament which in the reign of Henry the Seventh gave away the *very ſame* power to the crown, ſtood exactly on the *ſame* footing that the Engliſh parliament does *at this day*; and therefore their abſurd gift is, in all good conſcience and reaſon, a mere act of unauthorized power, and as ſuch, of no validity whatſoever to bind their poſterity. If any man can urge any thing upon conſtitutional principles in oppoſition to this deduction, then I ſhall readily retract every thing I have ſaid: I ſhall willingly acknowledge that the *executive* magiſtrate *propoſing* and *debating*, and the *deliberative* bodies *aſſenting* or *denying*, is the legitimate form of the Iriſh conſtitution!

3dly. There is a maxim worked into the very texture of our conſtitution, and laws which ſays *a deputy cannot depute*—one inveſted with the power of

of acting *for another*, muſt exerciſe that power *himſelf*, he cannot transfer it to *a third perſon*. On the ground of this maxim, if I put a man in my place to manage my private affairs, he cannot hand over the power I have entruſted him with to any other. So if I depute a man to manage my public concerns as a knight or burgeſs in parliament, he cannot appoint *a proxy* to act for him, *muſt vote and act in perſon*: whereas the lords ſpiritual and temporal, who ſit in the upper houſe of parliament *in their own right*, and not directly by a *delegated authority*, are *allowed* to put *another* in *their* place—they may act and vote by *proxy*. Now if *no individual* in that houſe of commons which paſſed Poynings' law could put *another* in *his* place, for the purpoſe of propoſing and deliberating upon laws, by what right could the *majority* of that houſe, *compoſed of thoſe very individuals*, put the king and the two privy councils in *their* place for the purpoſe of propoſing and deliberating upon laws? Could there be any right in the collective *body* which was not in the *parts* which compoſed that body? Or was the *whole* commons houſe leſs the repreſentatives of the *whole* body of the people than any *one individual* member was of *that part* of the people which deputed him? Did not the commons therefore, in this inſtance, contradict the great maxim which

governs

governs all *deputed* authority? Did they not controvert it in a *moſt unheard of manner*, by making proxies not merely for *themſelves*, during *one* parliament, but for their *ſucceſſors, in perpetuum?* Did they not ſtill farther groſsly deviate from their duty, by appointing *that power* for their *proxy*, upon which they were intended by the conſtitution to be a *cheque* and *comptrol?* And ſince the houſe of commons, (like the king), *id ſolum poteſt quod de jure poteſt*, is there any whoſe underſtanding is ſo ſtupidly beſotted as not to ſee at once, that this act of Poynings' wants the *legal concurrence* of the commons of this realm, and (though it were poſſible to overturn the *general* argument under the laſt head) that *this* incurable radical defect renders the act of no force whatſoever?

4thly. The point on which this unnatural yoke preſſes moſt ſenſibly is this: That a body of men in whom the conſtitution places no confidence, not even known to our ancient conſtitution, is thruſt in between the houſes of parliament and the crown, with the miſchievous power of delaying, miſrepreſenting, and even ſtifling the acts of the former; that is, in other words, that the privy council, in this monſtrous political ſcale, forms a compleat counterbalance to the two houſes of parliament.

parliament. This is robbing the crown of its beſt prerogative, a direct intercourſe with the two great councils of the nation, allowing a handful of men in the habits of privy counſellors, to overturn what they have ineffectually oppoſed in their garb of voters in parliament; it is eſtabliſhing the will of the minority againſt that of the plurality of voices, and this too in a clandeſtine inquiſitorial chamber, where all is covered with the myſterious veil of ſecrecy, and the public left ignorant of the hand that wounds them.

But, 5thly. The wiſdom of parliament is never exerciſed upon the laws which ought to be the pure emanations of *its wiſdom*. Heads of bills, before they are ſent to England, are but *once* read, and that only in *one* houſe, inſtead of being *thrice* read in *each* houſe, according to the wiſe practice before Poynings. Thus as the opportunities of amending them are fewer, they often go to the privy council in a ſtate which ſolicits correction. Having paſſed the privy council, the next ſtage is England, where the bill is generally conſigned to the crucible of a ſpecial pleader or conveyancer, who having purged it of its *Iriſh droſs*, and added what ingredients he deems proper, it receives its final ſubſtance, temper, and form, unalterable by our parliament on its return——a ſacred compoſition

ſition to be ſwallowed whole or entirely rejected! Now it is evident that ſuch a bill owns for its framer, neither the houſe that produces the embryo, nor the council that tranſmits it, but the crucible man to whom it is referred in its laſt ſtage; *he* ſtands laſt in the creative ſeries; *his* wiſdom changes, moulds, and models it, without reviſion or controul by *any power* exiſting in *this* country.

6thly. We complain, that ſince Poynings' act, no law of Ireland goes to the king with the *united voice and weight* of the two great legiſlative bodies of the nation. If the commons originate heads of a bill, it goes to England without ever paſſing the lords; if a bill takes its riſe in the lords' houſe, the commons have no opportunity of giving it the ſanction of their concurrence. Thus the maxim of *divide et impera* (rule them by dividing them) is allowed its full operation againſt us. The force of the national aſſemblies is frittered away and loſt for want of co-operation, and national objects are not preſſed home upon the executive power with that collected, conſtitutional energy, which the act and voice of a nation ſhould carry along with them. We are obliged to whiſper our grievances to the privy council in broken, divided

divided accents, inſtead of directly addreſſing our gracious ſovereign in one according ſolemn appeal.

But, 7thly. The people are ſenſible that the cauſe which firſt introduced this unnatural interpolation in the book of their liberties, no longer exiſts. Poynings' act was paſſed in the reign of Henry the Seventh, a prince of the Lancaſter line. Ireland had ever been devoted to the York intereſt. In the ſtruggles between the houſes of York and Lancaſter, it happened that a viceroy of the York faction continued maſter in Ireland after the Lancaſtrian party had gained the aſcendency in England. He continued true to his faction, ſcreened the Yorkiſts from the vengeance of the reigning prince, and, without any authority from the crown, paſſed laws unfavourable to the king on the throne. This evil was perceived in its full force by Henry the Seventh, a cunning and jealous prince, who, in order to bind up the hands of future delegates in Ireland, had the addreſs to procure the paſſing of the act called Sir Edward Poynings' act; by which every law intended to be paſſed in Ireland was to undergo his inſpection, and to receive his previous concurrence before it received his aſſent by the voice

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of his viceroy. The evil to be met was the eventual treachery of a lord lieutenant, but unfortunately the remedy for that evil was ſo ill projected, that in ſecuring the crown againſt its repreſentative, it raiſed up a pale of ſeparation between the crown and the parliament, which the exertions of honeſt and virtuous men have hitherto ſtrove ineffectually to remove. In that very reign the ſubſtantial cauſe of this law ceaſed, all competition for the crown was at an end.—— In the ſubſequent reign, the king of England was inveſted with the title of king * of Ireland, and, as king of *Ireland*, had a right to *a direct intercourſe* with his *Iriſh* parliament. No prior nor ſubſequent law could take this away: it ſprung up as *a neceſſary relation*, as ſoon as there exiſted a king and parliament between which that relation could ſubſiſt. This excluſive ſufficiency of the three eſtates is the great firſt principle of that conſtitution which Ireland received by a Magna Charta of her own, prior in date, and co-extenſive in privileges, with that which is the juſt boaſt of England!

But, 8thly. The object of this act is attainable by means as effectual, and more conſtitutional,

* Ir. ſtat. 33 Hen. VIII. chap. 1.

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than thoſe which the act purſues,—the object I mean, is to prevent variance or claſhing of intereſts between the crown and its repreſentative—and in this plain way: *after bills have paſſed the two houſes here, let them be tranſmitted to England under the great ſeal of this kingdom for the royal conſideration. When they have undergone the conſideration of the crown, let a* SPECIAL COMMISSION *be* MADE *out under the great ſeal of England, directed to the lord lieutenant, for paſſing ſuch of them into laws as ſhall meet the royal aſſent; and for rejecting the others. This* SPECIAL *commiſſion produced in open parliament, will be the warrant to the public that there is an actual concurrence or diſſent of the crown, and the crown will be perfectly ſecured againſt the miſchief, which it was the object of Henry the Seventh to remedy.*——This plan is no new conceit, but the very mode purſued in England, under the authority of the ſtatute of the 33d of Henry the Eighth, ch. 21, in caſes where the king does not think proper to go to parliament himſelf, as far as the circumſtances of the two countries will admit; and perfectly the ſame with the mode authorized by Ir. ſtat. the 11th of Elizabeth, ſeſſion 2, ch. 1. with this only difference, that the plan here propoſed requires the reading of the king's commiſſion in parliament, inſtead of the procla-

proclamations preſcribed by the laſt mentioned ſtatute.

9thly. The conſtitution here contended for, is much narrower than that *freely allowed* by Great Britain to *her colonies* in North America, before the late ever to be lamented rupture. In theſe colonies the *previous conſent* of the crown was not made neceſſary to the introducing of acts into their aſſemblies; and the governor had the power of aſſenting to or rejecting all acts propoſed to him, without *waiting to conſult the crown.* The acts thus paſſed had immediately the binding force of laws, and continued valid in the province where they paſſed, unleſs the crown exerciſed its undoubted right of interpoſing a negative. If no negative appeared, a concurrence between the crown and its delegate was preſumed, and the aſſent of the governor was taken for the aſſent of the king. The people of Ireland regard the conſtitution of parliament with too much reverence to hazard the privileges of any of its members by *ſuch a proviſion.* They do not wiſh that any ordinance *however approved by a governor* ſhould, for a moment, have the effect of a law, until it has the *actual perſonal concurrence* of their ſovereign. They would ſecure this his unalienable birthright by unſurmountable bar-

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riers—for as it is their ambition to enjoy the rights of Britiſh ſubjects without *addition* or *mutilation*, ſo it is their glory to ſupport the crown in the exerciſe of all its inherent prerogatives.

10thly. It is known to us all, that when the acts of Henry the Seventh, and of Philip and Mary, were paſſed into laws, the people of this country were *not repreſented in parliament*—I ſay the majority of the people. The Engliſh pale was confined, as I remember, to five counties. The remaining counties had no ſhare in the legiſlature of this country: they were not admitted to ſend repreſentatives until the time of James the Firſt, above half a century afterwards. This conſideration has, I own, to my mind, very great weight in lowering the authority of laws paſt in ſuch a *nonage* of our legiſlative bodies. When the number of lords and commons was ſo very inconſiderable, it might well enough happen that all, or at leaſt a great majority of the members of parliament were of the privy council; ſo that the ſame men who were to give the form of laws to the bills tranſmitted, were probably as privy counſellors concerned in tranſmitting them. In ſuch circumſtances, the evil of this law would be leſs *ſenſibly felt*; whereas, at preſent, when not one tenth of the number of our legiſlative bodies have a ſeat at the-

the privy council board, it muſt either happen that the acts of thoſe bodies are comptrolled by a minority of their own members, or by a handful of men, too obſcure, or too noxious, to be admitted into either houſe of parliament.

11thly. We are furniſhed with a very ſtrong argument for the repeal of thoſe ſtatutes, by the ſtatute-book itſelf, wherein there are two temporary repeals of Poynings' law, upon the declared principle of the hinderance it was of to public buſineſs, and theſe too in the arbitrary reigns of Henry the Eighth, and his daughter Elizabeth *. The conſtitution eſtabliſhed in the ſtatute of the latter much reſembles that which I have already propoſed to come in the place of our preſent practice:—a practice (for I will not call it by a better name) which creeping in under the maſk of an act of parliament, ſtrikes at the very foundation of parliament itſelf.—In this caſe, ſome difficulty may be thought to ariſe from the proviſion of the act 11th of Elizabeth, chap. 8. ſeſſ. 3d. whereby it is made neceſſary that all bills introduced for the purpoſe of repealing Poynings' law, muſt receive the approbation of *both* houſes of parliament, be-

* Ir. Stat. 28th Hen. VIII. Chap. 4.
Ir. Stat. 11th Eliz. Seſſ. 2d. Chap. 1.

fore they are tranſmitted to England for the previous conſent of the crown. This was a plain attempt of the good folks in queen Elizabeth's days, to eſtabliſh an eternal ſovereignty over their deſcendants, and to rule the roaſt for centuries after they were in their graves. It is as abſurd, as if they had enacted that no bill ſhould be good for the purpoſe of overturning this gigantic law, unleſs ſuch as paſſed the houſes of parliament *unanimouſly*. The parliament of this age cannot be bound to any whimſical or novel mode of proceeding, in derogation to the eſtabliſhed courſe, by a parliament which have ceaſed to act a century and a half ago.—All that we can grant them is, to ſubmit to their acts as long as the ſovereign power of the ſtate ſuffers thoſe acts to continue in force. But, if they would have us aſſent to ſuch propoſitions as theſe, *That an obligation cannot be diſſolved in the ſame mode by which it was contracted*, or, *That a parliament, which makes an abſurd law may be allowed to contrive abſurd devices, for the purpoſe of entailing that abſurd law upon their poſterity*, then we ſmile at their ſimplicity, but can never allow ourſelves to be the dupes of their artifice. The truth is, all laws, intended to clog or reſtrain the right inherent in the ſubſiſting legiſlative bodies of repealing or altering laws at their pleaſure, whether

whether they work their effect directly, or by a ſide wind, are no more than *mere blank paper*:— And, therefore, I do not a little wonder that Sir William Blackſtone ſhould ſeriouſly ſet down the proviſion of this ſtatute in his book, without any comment or note of diſagreement.

But, 12thly. This ſtumbling block, if there are any ſtill ſo weak as to think it one, may, by a little management, be kept entirely out of our way; an act entitled to *explain and amend*, inſtead of to *repeal* Poynings' law, will anſwer the great aim of the nation, without offending the moſt ſcrupulous. In this act the legitimate object of Poynings' law will ſtill be preſerved, but its miſchievous and degrading mode of ſecuring that object will be changed, for one more favourable to liberty. Thus, by a parliamentary manœuvre not unuſual, the unprecedented trick of the penners of the 11th of Elizabeth may be rendered completely abortive.

Since I have mentioned this ſtatute, I cannot help referring to it as a moſt authentic and full confirmation of what I have laid down under the 7th head as the original intent and deſign of Poynings' act, indeed ſo full as to preclude all doubt upon

upon the ſubject; and ſince it is certain (from what has been ſuggeſted under the 8th head) that the preſent degrading practice, introduced for fencing the crown againſt it delegate, is not *neceſſary*, but that an *honourable*, *ſafe*, and *obvious way* may be fallen upon to arrive at the *ſame end*, one too *analogous to that practiſed in England* when bills are paſſed by lords commiſſioners, and not by the king in perſon; ſurely none but a madman can doubt of the part the Iriſh parliament, awakened as they are to a ſenſe of their own dignity, and the rights of the nation, will adopt in ſuch a conjuncture. Can any man doubt but that the parliament of Ireland, when it repealed this law of Poynings' *for a time*, in the reign of queen Elizabeth, would have repealed it *for ever*, if that parliament had repreſented two and thirty flouriſhing, powerful counties, inſtead of five or ſix diſtracted and impoveriſhed ones? Or is it to be ſuppoſed that queen Elizabeth, had ſhe looked on Ireland as a loyal nation, inviolably attached to her perſon and government; as a nation containing hundreds of perſons of equal rank, fortune and conſequence with any delegate ſhe might ſend over to repreſent her; is it to be ſuppoſed, I ſay, that that wiſe queen could ſeriouſly for a moment entertain a fear, that the parliament of ſuch a nation could be duped into *diſloyal acts* by the perſonal influence

influence of a lord lieutenant, or that ſhe would once heſitate about breaking aſunder *for ever* ſhackles which the former neceſſity of the times might furniſh ſome excuſe for introducing, but which the change of circumſtances had rendered not only *uſeleſs* but *odious?* And *now* that every thing which I have above *ſuppoſed*, is in *effect true* with reſpect to this kingdom, who but an enemy to the houſe of Hanover can entertain a notion of any oppoſition on the part of George the Third, to a meaſure which the great prerogative queen would have adopted without heſitation?

13thly. It may perhaps be urged, ſince Poyn-ings' act is *void in itſelf*, that to repeal or new-model it is a meaſure neither *neceſſary* nor *expedient* This reaſoning applies fully to the laſt mentioned act of the 11th of Eliz. which has remained a dead letter on the ſtatute book, never once acquieſced in, nor allowed as a rule of proceeding. But Poyn-ings' act ſtands on a different footing; it has given riſe to a practice uniformly followed for above two centuries, and which in fact governs the proceedings of parliament at this day. Now the acquieſcence of parliament, though it does not make that *right* which is in itſelf *wrong*, yet it gives efficacy and continuance to the *practice*, as long as the *acquieſcence* itſelf continues. The

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queſtion then is, how is that acquieſcence to ceaſe? Is it to ceaſe by a *change* of the *practice*, without any explicit declaration? Or is parliament by a ſolemn *act* to *declare* and *eſtabliſh* a *different practice* founded upon better principles? In my opinion the latter is the moſt effectual, as well as the wiſeſt mode of proceeding. An act of the legiſlature will remain a ſtanding monument of the freedom of Parliament—and the ſame ſtatute book, which records our diſgrace, will bear teſtimony to our emancipation.

14thly. As to the EXPEDIENCY of ſetting about this good work immediately, I am happy to find it the prevailing and growing opinion, that *an hour is not to be loſt*. The notion *that we have got enough for this winter*, is too abſurd to deſerve an anſwer. The queſtion is whether our claim is reaſonable, and ſuch as moderation warrants? Whether any man can lay his hand on his heart and ſay, we go a line beyond the *great boundary of right* in our preſent ardent wiſh? Is this a *new fangled, new invented grievance*, which we have found out *yeſterday*, or is it not one, that every good patriot has wept over in his cloſet for above *two centuries*? Have we *now* a virtuous Parliament, and is that *always*, or *even generally* to be expected? Have we *now* a conſenting adminiſtration, diſpoſed to liſten to our

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juſt complaints, and are we always to expect *ſuch prodigies?* The time to purſue an object is when that object is *attainable*; there is no time to urge a demand which ſounds like *an encroachment*; all times and ſeaſons are hallowed for the aſſertion of thoſe rights which the conſtitution has rendered *ſacred.* The very Miniſters on the other ſide of the water ſympathize with the bitter feelings of Ireland on this ſubject. I heard one of them *, within theſe two months, in his place in the Houſe of Lords, lament the "degraded condition of our "legiſlative bodies." The jealouſy of England is not concerned in this queſtion, it is only whether the right arm of this country ſhall be rotten or ſound; and ſhall we bear with that rotteneſs *an hour*, when we have the knife and the ſtyptic in our hands? Shall we nurſe our ſores, and ſay to the phyſician, *we have got enough, we feel no pain!* The manly part which common ſenſe dictates is, to go on with the glorious taſk of ſecuring this our acknwledged right with *unanimity*, *temper* and *moderation.* Whoever attempts to go a ſtep farther, to weaken the bond by which we are linked with our ſiſter kingdom, (and I hope indiſſolubly) will prove a very harmleſs man in the end, for he will meet with the hatred and contempt of all right-minded men in both countries.

15thly.

* The Earl of Hillſborough.

15thly. As to the meaſure immediately under our conſideration, I have ſuch a confidence in our privy council, that I can hardly conceive that men of the firſt rank and conſequence in this country ſhould ſtand in the way of its obtaining a *free conſtitution*. I am ſure if there is any among them ſo preverſe, he is very unfit to comptrol the acts of the legiſlature of this country; and ſhould he be ſo miſchievouſly ſucceſsful, as to communicate his diſaffection to his fellow counſellors, I hope to ſee a ſpirited ſtep taken by the parliament of this country, I mean the *glorious* one of ſending a deputation from the two houſes, to lay the act for new moddelling and amending Poynings' Law *at the feet of his majeſty*; and when this meaſure is crowned with the ſucceſs it deſerves, I will be glad to ſee the lawyer, or the man in this country, who will dare to affirm, that ſuch act is not as *conſtitutional*, *ſound* and *valid*, as any that ſtands recorded on the parliament rolls. Indeed the bare ſuppoſition of an additional energy, added to the acts of King, Lords, and Commons, by the concurring ſuffrages, [not of a handful of men here] but of any, the moſt auguſt aſſembly upon earth, ſeems to me the very height of political abſurdity.

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I have thrown theſe thoughts haſtily together, not with a view of inflaming the minds, but of repreſenting what I take to be the ſtrenuous and ardent wiſh of the people of this iſland; a loyal, brave, and enduring people, who aim their views no farther than to reſtore the great *organ of their happineſs, their legiſlature*, to its ancient form and ſtandard. This they look for as men entitled under that conſtitution, of which parliament is only the creature, to the privileges and immunities of Britiſh ſubjects; this they expect from the virtuous exertions of that very parliament, which it is their deſire to reſtore to its conſtitutional importance; whoſe acts for the public good will be ſeconded by the public voice, and ſupported by the public arm.

F I N I S.

APPENDIX.

1ſt. A Late writer on the Law of Poynings' has, among others, hazarded the following extraordinary argument:—Great Britain and Ireland are ſubject to a common ſovereign; Great Britain is a more powerful and wealthy nation than Ireland; therefore the ſovereign is more dependant on Great Britain than on Ireland—on the rich, than on the poor country; he will therefore treat the acts of the legiſlature of the rich country, with more deference than thoſe of the poor; therefore, although the crown has ſeldom ventured to give a negative to the acts of the Britiſh legiſlature, yet the Iriſh legiſlature is not to expect the ſame deference: *therefore, in ſuch deſperate circumſtances, it is nugatory in the Iriſh nation to attempt to reſtore her legiſlative bodies to their antient conſtitutional importance.*—Such is the chain of reaſoning, and ſuch the inference of this writer! But from his premiſſes I draw very oppoſite concluſions. For

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aſt. Since Great Britain is a more powerful and wealthy nation than Ireland, and of courſe more capable of influencing the prerogative, every cauſe of jealouſy, with reſpect to the perfection of our conſtitution, is taken away from Great Britain; ſhe exceeds, and muſt ſtill exceed us, in the moſt ſolid of all advantages: She need not fear that our common ſovereign will be *more* the King of Ireland than of Great Britain; her ſuperior capacity of gratifying or comptrolling the wiſhes of the crown, will for ever prove a powerful protection to her intereſts, in caſe they ſhould come in competition with the intereſts of Ireland: Her attention to thoſe intereſts cannot, therefore, ſtand in the way of our improving our conſtitution, ſo as eventually to advantage ourſelves, without a poſſibility of injuring her. 2dly. Since Ireland is leſs rich and leſs powerful than Great Britain, Ireland ſhould make the *moſt* of her little wealth and power; ſhe ſhould endeavour to collect her feeble and ſcattered rays within one concentring focus: She ſhould ſend her legiſlative acts to the throne, ſtamped with the conſenting approbation, and expreſſing the conſpiring wiſhes of both Houſes of Parliament: She ſhould not, poor and weak as ſhe is, deſpiſe thoſe means of attaining the attention and protection of her ſovereign, which her rich and powerful ſiſter eſteems neceſſa-

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ry to *her* protection: She ſhould labour to reſtore her legiſlature to a ſimilarity with that of Great Britain. To argue, that becauſe we are deficient in *natural ſtrength*, we ſhould add to our weakneſs by *political infirmity*; that becauſe we cannot attain that importance we could *wiſh*, we ſhall not aſpire to that perfection we *may attain*, is to contradict every maxim of human prudence; and by the abjectneſs of deſpair, to yield to difficulties which we might ſurmount, and ſink under a preſſure which ſhould only ſerve to ſtimulate our exertions.

2dly. This writer ſuppoſes, that it is the ſame thing to the Iriſh nation, whether the royal negative be impoſed in what he calls the ſecond, or the laſt ſtage of a bill; whether it be given by the intervention of the Privy Council, or by the King's deputy, in obedience to the King's expreſs commands, in open Parliament. To ſupport this ſuppoſition he muſt maintain the following propoſitions: 1ſt. That Heads of a Bill, which have been but *once* read, and that only in *one* Houſe, come with as much weight to the conſideration of the Crown or Privy Council, as a bill, that after *mature deliberation*, carries along with it the *united* approbation of *both* Houſes. 2dly. He muſt maintain, that the Privy Council never re-

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ject a bill, which the King himſelf would not *reject*; and this at the very time when he is defending the Law of Poynings'; a law, which proceeds on a principle, directly in the teeth of his argument: For if the Lord Gormanſtown, the obnoxious Deputy before Poynings, *did paſs* laws in this country, which the then King would *not* have *paſſed*, what ſecurity have we, that future Privy Councils may not *reject bills*, which the King himſelf would *not reject*? Is there any myſterious unity ſubſiſting between the King and his Privy Council, which did not ſubſiſt between the King and his Deputy? And if not, will this writer entruſt the ſacred intereſts of his country to the narrow policy of a caſtle junto? thoſe intereſts, which challenge the immediate foſtering care of the benevolent parent of all his people! 3dly. This writer muſt maintain, that the ſame miniſter, whoſe courage might ſerve him for the ſuffocation of a bill, in its firſt ſtage, would meet it undiſmayed in the laſt period of its maturity, and, in the face of the nobles and choſen men of the land, ſtrike at its exiſtence! The cauſe of liberty is beſt promoted by plain dealing, in open day, before all the world! As well might this writer put the privacy of the Baſtile, or the Palace of Saint Mark's, in competition with the proceedings in Weſtminſter Hall, as compare the ſe-

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cret practices of a Privy Council, with the antient approved mode of affirming or rejecting bills, which our wiſe anceſtors have eſtabliſhed.

3dly. This writer ſeems to think, that the practice introduced in the time of Charles the firſt, of framing *Heads of Bills* in either houſe, reſtores our houſes of parliament to their antient capacity of *deliberative aſſemblies*; but in this he is manifeſtly miſtaken, for 1ſt. Deliberation involves in its very idea the power of *reſolving*, *acting*, and *determining*; without this power, deliberation means no more, than to *weigh* and *conſider*, in order to *ſuggeſt*. Can our Houſes of Parliament deliberate in the firſt ſenſe of the word? Can they reſolve, can they determine finally, that is, can they determine *at all*, with reſpect to any ſingle clauſe, in any ſingle Bill? Is then their deliberative capacity reſtored? If we look into the proceedings of the Britiſh Parliament they will *eſtabliſh* this import of the word deliberation. If a Bill which has paſſed either Houſe in England, receives any alteration in its progreſs through the other, it is ſent back to the Houſe where it took its riſe, to be reconſidered.—If the alterations are adopted, the Bill purſues its ordinary courſe; if they are rejected, the Bill falls to the ground, or becomes the ſubject of a *friendly conference between the two Houſes*: And why? Becauſe that Houſe, which ſhould allow to the other, the

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power of altering its reſolutions and determinations without reviſion, would thereby *loſe* its deliberative capacity, it would only *ſuggeſt* to the other matter of *adoption*, *alteration* or *rejection*, it would *forfeit* its eſſential prerogative. 2dly. But ſuppoſing the meagre privilege of *ſuggeſting* matter of deliberation to the Privy Council, to amount to a capacity of deliberation, this capacity, upon this writers own principles, is reſtored only to that Houſe which *originates* the heads of a bill. To illuſtrate this, heads of a bill take their riſe, for example, in our Houſe of Lords, and ſuppoſing them returned under the Broad Seal in the form of a Bill, and that the bill has paſſed the Houſe where it took its riſe, it is carried down to the Houſe of Commons: Has that Houſe ever ſeen the bill before? No—Can that Houſe deliberate on the *principle* of the bill? No. Can that Houſe amend a *clerical error* in the bill? It certainly cannot—The only queſtion which that Houſe is competent to decide, is, Whether the bill as it comes engroſſed from the Lords, ſhall paſs into a law or not—Thus, clearly in this caſe, on this writer's own principles, the collected wiſdom and experience of a deliberative aſſembly, is circumſcribed within the narrow ſphere of aſſent or denial.

4thly. But this writer has found out a *Noſtrum*, to cure all the diſorders introduced by Poynings'

Law. Our legiſlative bodies he maintains, may reſtore their conſtitutional importance by *rejecting* all bills which return from England altered: That is, they may reſtore their powers of *promoting* and *enforcing* laws by *rejecting* them, they may reſtore the faculty of deliberation which they have loſt, by exerciſing the right of negativing, which all the world allows they have retained. Can a more abſurd notion than this be conceived? For either the Engliſh Miniſter is inclined to paſs a bill tranſmitted from this country, or he is not; if he be inclined to paſs it, the object of our wiſhes is accompliſhed; if he be inclined to reject it, this writer ſuggeſts a mode by which it may be done, ſmoothly, and ſilently, without any odium to him; he has only to introduce ſome ſlight alteration into the bill, and the rejection comes from the very quarter his heart could wiſh. It is true, indeed, our Houſe of Commons, may in the caſe of a *money bill*, venture to reject for alterations, without any danger of *loſing* the bill, becauſe the Crown *muſt* have money, and that money *muſt* come from the Commons. But does it follow, that becauſe the miniſter will put up with a rejection where his *intereſt* is materially to be promoted by his ſo doing, that he will do the ſame thing, where his *intereſt*, or at leaſt his *wiſhes* are in diametrical oppoſition to the wiſhes of the nation? And

And in this laſt caſe, what end is anſwered by a bill's being rejected in the Houſe of Lords or Commons, that is not anſwered by its rejection in the Privy Council? And is not the power of rejecting in the Privy Council, the very grievance the nation complains of?

5thly. This writer boldly pronounces the practice of framing heads of bills, to be *a violation of the the law of Poynings'*. He is deluded by a name — *Heads* of a Bill are no more than a *Petition*, which does not go from one Houſe of Parliament to the other, like a *bill*, but from one Houſe of Parliament to the Privy Council; it only ſuggeſts matter proper for a bill; and like all *other* petitions, its prayer may be complied with, by the *higher powers* to whom it is addreſſed, *in the whole, or in part only, or it may be entirely rejected.* What then is the mighty power of framing heads of a bill— only the power of *petitioning* the *Privy Council!*— and is it a violation of *any law* to *petition?* Is not the right of petitioning inherent in every *individual* in the kingdom, much more in our *national aſſemblies?* And although it ſhould be true that the Privy Council have, in modern times, only tranſmitted *ſuch* bills, the *matter* whereof has been *ſuggeſted* to them by *one of our Houſes of Parliament*, yet ſtill, there is no inſtance ſince the days of Poynings, of a *bill's* being *introduced* into our Parliament

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without the King's *previous conſent*, under the *Broad Seal*, firſt had and obtained; and until a *bill ſhall* be introduced, *without ſuch conſent ſo ſignified*, there cannot even be an *imaginary* violation of the law of Poynings'.

6thly. This writer, the ſtrain of whoſe pamphlet, as far as it relates to the preſent ſubject, is a direct panegyric on the Privy Council, has indulged the moſt licentious ranges of his fancy in conjuring up ſuppoſitions injurious to the honour of our Houſe of Lords. He ſuppoſes a Houſe of Lords compoſed of *Aliens*, *dependant Biſhops*, and *Court Hirelings*. He ſuppoſes the members of that Houſe ready tools in the hands of any miniſter how profligate ſoever he may be: He ſuppoſes them dupes to their worſt paſſions, and enemies to their beſt intereſts: That aſſembly which the conſtitution has cloathed with hereditary honour and authority, and placed as a regulating power between the ambition of the crown, and the turbulence of the people: That aſſembly which is the great repoſitory of the fundamental principles of our government, the choſen Life-guards of our conſtitution.—That aſſembly he has endeavoured to vilify, and by ſtripping it of thoſe attributes of honour, dignity, and independence, with which the founders of our civil polity, had, for the wiſeſt purpoſes,

purpoſes, inveſted it; has as far as in him lay, ſown the ſeeds of diſſention, and laid a foundation for jealouſy and diſcord. Can we for a moment admit a *ſuppoſition* that our gracious ſovereign will ſurround his throne with hereditary counſellors, *merely* becauſe they poſſeſs the quality of *traitors to this country?* Can we ſuppoſe men baſe enough to accept of honours upon ſuch *deteſtable* conditions? When we *can* ſuppoſe ſuch things, liberty has already taken her flight—deſpotiſm has already ſtruck its iron roots into our ſoil—the conſtitution is no more—we may ſay, with the fabled Æneas, *fuimus Troes*—But like him too, we muſt look around us for a new country.—Upon this point I ſhall only obſerve, that it is natural enough for a writer who would depreciate our old conſtitution, to decry its conſtituent members; and the ſame man who confides in the *arbitrary tenure* of a Privy Counſellor, is the moſt likely perſon in the world to diſparage the title of thoſe noble perſonages who enjoy a *fee ſimple* in their honours.

As I am ignorant who this writer is, I cannot be accuſed of flattery, when I expreſs my admiration of the propriety with which he has acted, in putting his apology for Poynings' Law into the mouth of A FOREIGNER.—Such an apology, he very rightly judged, would not *go down* in the character

character of AN IRISHMAN; and beſides, by this manœuvre, he ſtands diſcharged from the obligation of ſtating, with accuracy, a conſtitution he is not ſuppoſed to know, and defending, with warmth, intereſts he is not ſuppoſed to feel. —The foregoing ſtrictures have been *extorted* by the occaſion—I have neither time nor inclination to proceed further in the field of political controverſy; I ſhall therefore *finally* take my leave of this ſubject, and of this writer, by wiſhing him that conſolation from ſome other quarter, which his principles cannot lead him to expect from the confidence of the public.

FINIS.